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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,235	07/24/2003	Glen R. Harrelson	7186 CIP	1277

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,235	<b>Applicant(s)</b> HARRELSON, GLEN R.	
	<b>Examiner</b> Bryon P. Gehman	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☒ Claim(s) 1-19, 21-23 and 29-35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/10/05</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19, 21-23 and 29-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 10-11, "said cylindrical containers" should --the cylindrical containers--, as only positively included components are "said" and cylindrical containers are mentioned but do not comprise part of the claimed carton. See also claims 10 and 14, line 10 of each. In claim 1, line 13 and subsequent thereto, "said bottom side panel" lacks antecedent basis, as "and foldably attached adjoining bottom side and top side panels" in lines 7-8 lacks definition of one such panel. See also "said top side panel" in line 17. The initial recitation in lines 7-8 should be --and a bottom side panel and top side panel foldably attached and adjoined--. See also claims 10 and 14, lines 7-8 to correct the same problems. In claim 1, line 16, "the dispenser" lacks antecedent basis and isn't defined until line 20. In claim 1, line 24, "the existing end" lacks antecedent basis. See also claim 10, line 39. In claim 1, lines 12- 27, "dispenser opening" and "dispenser" are used interchangeably, rendering the scope of either term indefinite. See also claim 10, line 42, where "dispenser opening" lacks antecedent basis. In claim 1, line 26, "the end" should be --said one end--, as two different "ends" have been defined. See also claim 10, line 41 and claim 14, line 40.

In claim 7, line 3, "the bottom said panel" lacks antecedent basis or is inconsistent with previous terminology.

In claims 21 and 33, there is insufficient recitation of structure to provide for the first top and bottom ends to be folded or foldable.

In claim 29, line 2, It is indefinite what "comprising" refers back to, the carton, the containers or both. Apparently, before "comprising" should be added -- , the carton --. In lines 13-14, "at least partially unfolding at least one of said first top end and said bottom end to allow said containers to be removed" has insufficient antecedent basis, as the antecedent folding is insufficiently recited to provide this act to occur.

In claim 30, line 3, "said bottom layer" lacks clear antecedent basis, and line 2 should be amended to read --bottom layer and ...--. See also claim 34.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliff et al. (5,368,194). Disclosed is an enclosed carton and a plurality of containers in first and second tiers, the carton comprising a bottom panel (18), a bottom side panel (14), a top panel (12), a top side panel (22), a plurality of flaps (30, 34, 68, 72) closing ends of the carton, and a divider (90) located between the tiers and having first and second divider ends (at 94 and 98), the first divider end having a first split (96) that divides the first divider end into a first top end (between 104 and 96) and a first bottom

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end (94). The terms "top" and "bottom" of the divider end are not seen to distinguish any particular arrangement. As the folded portion (94) is closer the bottom than the unfolded portion (between 104 and 96).

As to claim 24, the divider width is necessarily a width less than the carton to fit within the carton.

As to claim 25, a 24 count container carton is disclosed.

As to claims 27 and 28, a dispenser opening (84 or 86) is disclosed.

5. Claims 1-19 and 29-35 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

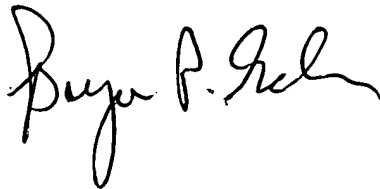
6. Claim 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Dependent claims 22 and 23 would also then be allowable.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are cartons with dividers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG